

Original sponsor: Parr

Offered: 5/6/82
Referred: Rules

1 IN THE SENATE

BY THE FINANCE COMMITTEE

2 HOUSE CS FOR CS FOR SENATE BILL NO. 327 (Finance)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TWELFTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to parole of offenders; and providing
7 for an effective date."

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

9 * Section 1. AS 33 is amended by adding a new chapter to read:

10 CHAPTER 16. PAROLE ADMINISTRATION.

11 Sec. 33.16.010. BOARD OF PAROLE. (a) There is in the Department
12 of Health and Social Services a Board of Parole consisting of five
13 members appointed by the governor subject to confirmation by a majority
14 of the members of the legislature in joint session.

15 (b) Members of the board serve for staggered terms of five years
16 and until their successors are appointed and qualified. A vacancy on
17 the board shall be filled for the unexpired term within 30 days of the
18 vacancy.

19 (c) The board shall choose its presiding officer from among its
20 membership.

21 Sec. 33.16.020. NOMINATIONS. The governor shall seek nominations
22 for board members from civic, professional, and ethnic organizations in
23 the state and shall make appointments to the board with due regard for
24 representation on the board of the sexual, ethnic, racial, and cultural
25 populations of the state.

26 Sec. 33.16.030. SELECTION CRITERIA FOR BOARD MEMBERS. (a) The
27 governor shall appoint board members on the basis of their qualifica-
28 tions to make decisions that are compatible with the welfare of the
29 community and of individual offenders. The governor shall appoint

1 board members who are able to consider the character and background of
2 offenders and the circumstances under which offenses were committed.

3 (b) At least one person appointed to the board shall have ex-
4 perience in the field of criminal justice, psychology, or human rela-
5 tions.

6 (c) Officers or employees of the department may not be appointed
7 to the board.

8 Sec. 33.16.040. REMOVAL OF MEMBERS. (a) The governor may remove
9 a board member only for disability, nonfeasance, neglect of duty, mal-
10 feasance in office, conviction of a misdemeanor involving moral turpi-
11 tude, or conviction of a felony.

12 (b) Removal of a board member is initiated by delivering to the
13 board member a written statement of the charges against the board
14 member and by giving the board member an opportunity to be heard in
15 person or through counsel at a public hearing in defense of the charges.
16 The hearing shall be before the governor or a designee of the governor.
17 The time fixed for the hearing may not be less than 10 days after the
18 statement is delivered to the board member. At the hearing the board
19 member has the right of confrontation and cross-examination of the
20 witnesses who testify.

21 (c) The removal of a board member is effective 15 days after a
22 statement of the charges made against the board member and the findings
23 on those charges are filed by the governor in the main office of the
24 board. The board member may appeal the findings of the governor to the
25 superior court. The court shall limit its review to a determination of
26 whether the findings of the governor are substantiated by the evidence
27 presented. The removal of the board member is suspended while an
28 appeal from the findings of the governor is pending.

29 Sec. 33.16.050. COMPENSATION AND EXPENSES. A board member is

1 entitled to compensation of \$150 per day for each day the board member
2 is conducting the business of the board and is also entitled to the
3 per diem and travel allowances provided by law for other boards and
4 commissions.

5 Sec. 33.16.060. MEETINGS OF THE BOARD. (a) The board may meet as
6 often as it considers necessary to consider its responsibilities. The
7 board shall meet no less than four times a year.

8 (b) Three members of the board constitute a quorum for the conduct
9 of business.

10 (c) Decisions and orders of the board require the votes of a
11 majority of the members present and in no case less than the votes of
12 two members.

13 (d) Except in the consideration of matters involving the release
14 of a prisoner on parole or parole revocation, the board may conduct a
15 meeting over the telephone or by the use of teleconference facilities.

16 Sec. 33.16.070. PROCESS. The board or a member of the board may
17 issue subpoenas and subpoenas duces tecum.

18 Sec. 33.16.080. RESPONSIBILITIES OF THE BOARD. (a) The board
19 shall

- 20 (1) serve as the parole authority for the state;
- 21 (2) consider the suitability for parole of all prisoners
22 serving sentences who are eligible for consideration for parole, unless
23 a prisoner waives consideration of parole;
- 24 (3) discharge a person from parole when supervision is no
25 longer required;
- 26 (4) maintain records of the meetings and proceedings of the
27 board;
- 28 (5) adopt standards that shall apply fairly to all prisoners
29 for determining when a prisoner should be considered for and receive

1 parole;

2 (6) recommend to the legislature changes in the laws ad-
3 ministered by the board;

4 (7) recommend to the commissioner changes in the practices
5 of the department and of other departments of the executive branch;

6 (8) execute other responsibilities prescribed by law.

7 (b) The board shall adopt regulations under the Administrative
8 Procedure Act (AS 44.62)

9 (1) establishing the standards, which shall apply fairly to
10 all prisoners, under which the suitability of a prisoner for parole
11 will be decided;

12 (2) providing for the supervision of parolees and for recom-
13 mitment of parolees; and

14 (3) governing procedures of the board.

15 Sec. 33.16.090. EXECUTIVE DIRECTOR. The board shall hire an
16 executive director who has training and experience in the field of
17 probation and parole. The executive director serves as the executive
18 officer for the board in the accomplishment of its functions. The
19 executive director serves at the pleasure of the governor. The execu-
20 tive director shall employ the staff of the board.

21 Sec. 33.16.100. ELIGIBILITY FOR DISCRETIONARY PAROLE. (a) A
22 state prisoner other than a juvenile delinquent, wherever confined, who
23 is serving a term of at least 181 days and who is not imprisoned in
24 accordance with AS 12.55.125(c)(1), (c)(2), (c)(3), (d)(1), (d)(2),
25 (e)(1), or (e)(2), may, in the discretion of the board, be released on
26 discretionary parole subject to AS 12.55.086(b), AS 33.16.110, and
27 33.16.120(b).

28 (b) A state prisoner imprisoned in accordance with AS 12.55.125(a)
29 or (b) may not be released on discretionary parole until at least the

1 prescribed minimum term of imprisonment has been served.

2 (c) A state prisoner imprisoned in accordance with AS 12.55.-
3 125(c)(1), (c)(2), (c)(3), (d)(1), (d)(2), (e)(1), or (e)(2), who is
4 released under AS 33.20.030, shall be placed on mandatory parole for the
5 period specified in the certificate of deduction, less 180 days, subject
6 to written conditions imposed by the board.

7 Sec. 33.16.110. FIXING ELIGIBILITY FOR PAROLE AT TIME OF SEN-
8 TENCING. When in its opinion justice and the best interests of the
9 public require that a defendant be sentenced to imprisonment for a term
10 exceeding one year, the court having jurisdiction to impose sentence,
11 upon entering a judgment of conviction, may designate in the sentence of
12 imprisonment a term at the expiration of which the prisoner is eligible
13 for discretionary parole. The term shall be at least one-third of the
14 period of confinement imposed by the court or the minimum term pre-
15 scribed in AS 12.55.125, whichever is greater.

16 Sec. 33.16.120. GRANTING OF DISCRETIONARY PAROLE. (a) The board
17 may authorize the release of a prisoner on discretionary parole if it
18 determines that

19 (1) the prisoner eligible for discretionary parole will, in
20 reasonable probability, live and remain at liberty without violating the
21 laws or without violating the conditions imposed by the board; and

22 (2) the release of the prisoner on discretionary parole is
23 compatible with the welfare of society and would not depreciate the
24 seriousness of the crime.

25 (b) A prisoner may not be released on discretionary parole until
26 the prisoner has served at least one-third of the period of confinement
27 to which the prisoner was sentenced or the minimum term prescribed in
28 AS 12.55.125, whichever is greater.

29 Sec. 33.16.130. SUITABILITY FOR DISCRETIONARY PAROLE. In deter-

1 mining whether a prisoner is suitable for discretionary parole, the
2 board shall consider

- 3 (1) the pre-sentence report made to the sentencing court;
4 (2) the recommendations made by the sentencing court, by the
5 prosecuting attorney, by the defense attorney, and any statement made by
6 the prisoner at sentencing;
7 (3) the prisoner's history at the correctional facility to
8 which assigned by the department;
9 (4) a recommendation made by an officer responsible for the
10 correctional facility to which the prisoner was assigned;
11 (5) official reports of earlier crimes and earlier probation
12 and parole experiences;
13 (6) physical, mental, and psychiatric examinations of the
14 prisoner;
15 (7) information submitted by the prisoner, the attorney of
16 the prisoner, a victim of the crime, or other persons; and
17 (8) other useful information that may be reasonably avail-
18 able.

19 Sec. 33.16.140. LACK OF TREATMENT. The board may not deny parole
20 to a prisoner otherwise suitable for parole on the ground that the
21 prisoner did not obtain necessary or desirable treatment while confined
22 if the treatment was not available to the prisoner at the correctional
23 facility to which the prisoner was assigned by the department. This
24 section does not abrogate the authority of the board to deny a prisoner
25 parole if, as a result of the lack of treatment, a prisoner is deter-
26 mined unsuitable for parole under AS 33.16.120(a).

27 Sec. 33.16.150. HEARING ON APPLICATION FOR DISCRETIONARY PAROLE.
28 (a) A prisoner has the right to a preliminary hearing before a single
29 member of the board or a person authorized by the board to act as a

1 hearing officer to determine the suitability of a prisoner for parole or
2 for the setting, posting, or rescinding of parole dates. The prisoner
3 shall be provided reasonable notice of the hearing. The preliminary
4 hearing shall be electronically recorded. The recording of the prelimi-
5 nary hearing shall be reviewed by the full board within 60 days of the
6 preliminary hearing.

7 (b) The prisoner shall be permitted to have a copy of the pre-
8 parole report and records that will be considered by the board no less
9 than 10 days before the hearing. The prisoner has a right to enter
10 written responses to all reports and records that will be considered by
11 the board.

12 (c) The prisoner has a right to be present at the hearing, to
13 present evidence, and to cross-examine witnesses.

14 (d) On review of the recording of the preliminary hearing or after
15 a hearing by the full board, the board shall issue its decision in
16 writing and provide reasons for the decision. The prisoner is entitled
17 to a copy of the decision at the time it is issued.

18 Sec. 33.16.160. ORDER FOR PAROLE. The board shall furnish to each
19 person released under its supervision an order for parole. The order
20 for parole shall contain the conditions imposed by the board for parole
21 and the date that the parole supervision expires. The order for parole
22 does not take effect until it is accepted and signed by the parolee.

23 Sec. 33.16.170. CONDITIONS OF PAROLE. (a) The board shall re-
24 quire that a prisoner released on parole refrain from violation of state
25 or federal law or a municipal ordinance as a condition of parole.

26 (b) Depending on the nature and circumstances of the crime for
27 which the prisoner was convicted and the background of the prisoner, the
28 board may require as a condition of parole under AS 33.16.160 that a
29 prisoner released on parole agree to:

- 1 (1) meet family obligations;
- 2 (2) pursue employment, education, training, or subsistence;
- 3 (3) remain within stated geographic limits unless the parole
4 officer grants the parolee written permission to depart from the stated
5 limits;
- 6 (4) report on release to the parole officer of the parolee;
- 7 (5) report at regular intervals to the parole officer of the
8 parolee;
- 9 (6) reside at a stated place and notify the parole officer of
10 a change in place of residence;
- 11 (7) have in possession no dangerous firearm or dangerous
12 weapon unless the board grants written permission for the possession;
- 13 (8) refrain from consuming alcoholic beverages;
- 14 (9) submit to searches and seizures conducted reasonably by a
15 parole officer or by a peace officer acting under direction of a parole
16 officer;
- 17 (10) submit to necessary medical, psychiatric, or other exami-
18 nation or treatment if available or to an examination or treatment for
19 the use of alcohol or drugs if available;
- 20 (11) refrain from entering into an agreement or other arrange-
21 ment with a law enforcement agency that will place the parolee in the
22 position of violating a state or federal law or a municipal ordinance
23 or a condition of parole;
- 24 (12) refrain from opening, maintaining, or using a checking
25 account;
- 26 (13) refrain from entering into a contract, other than a
27 prenuptial contract or a contract of marriage, without permission in
28 writing from the parole officer of the parolee;
- 29 (14) refrain from operating a motor vehicle;

1 (15) refrain from entering a liquor store, bar, pub, tavern,
2 or night club designated by the board.

3 (c) The board may by regulation adopt additional conditions that
4 are consistent with (b) of this section.

5 Sec. 33.16.180. HEARING ON APPLICATION FOR CHANGE IN PAROLE CON-
6 DITIONS. (a) A parolee is entitled to reasonable notice of and may
7 request a hearing on a proposal to change a parole condition or to add
8 new parole conditions. The board shall provide the parolee with the
9 reasons for the proposal.

10 (b) The parolee shall be permitted to have a copy of the infor-
11 mation and records that will be considered by the board no less than
12 seven days before the hearing. The parolee has a right to enter written
13 responses to the information and records that will be considered by the
14 board.

15 (c) The parolee has the right to be present at the hearing, to
16 present evidence, to cross-examine witnesses, and to remain silent.

17 (d) The board shall issue its decision in writing and provide
18 reasons for the decision. The parolee is entitled to a copy of the
19 decision on its issuance.

20 Sec. 33.16.190. WAIVER OF HEARING. A prisoner or parolee may
21 waive a hearing provided under AS 33.16.150 or 33.16.180 by submitting a
22 written waiver to the board.

23 Sec. 33.16.200. CONFIDENTIALITY OF RECORDS AND INFORMATION. The
24 pre-parole reports submitted to the board are confidential and may not
25 be disclosed to anyone other than the board, the sentencing judge, the
26 prosecuting and defense attorneys, the prisoner and the prisoner's
27 attorney, or others granted the right under this chapter to receive the
28 information.

29 Sec. 33.16.210 APPEALS. A prisoner or a parolee may appeal a

1 decision or order of the board to the superior court on the ground of
2 arbitrariness or abuse of discretion.

3 Sec. 33.16.220. DUTIES OF THE COMMISSIONER. The commissioner
4 shall

5 (1) conduct investigations of prisoners eligible for parole
6 as the board requests;

7 (2) supervise the conduct of parolees and institute programs
8 for reform and rehabilitation of parolees as the board requests;

9 (3) appoint and assign parole officers and personnel to the
10 judicial districts in the state and to train and supervise parole offi-
11 cers and personnel;

12 (4) provide the board within 30 days after sentencing with
13 information on sentenced prisoners;

14 (5) keep records, files and accounts as the board requests.

15 Sec. 33.16.230. ACCESS TO LAW BY PRISONERS. The commissioner
16 shall make available at each correctional facility in the state and at
17 each correctional facility outside the state at which a prisoner of the
18 state is maintained a current edition of Alaska Statutes, of the Alaska
19 Administrative Code, and of the Alaska Rules of Court.

20 Sec. 33.16.240. PAROLE OFFICERS. The commissioner may assign the
21 duties of probation officers under AS 33.05 to parole officers appointed
22 under AS 33.16.220(3).

23 Sec. 33.16.250. DISCHARGE OF PAROLEE. (a) The board retains
24 legal custody of a discretionary parolee until the expiration of the
25 maximum term or terms to which the parolee is sentenced less 180 days.
26 The board retains legal custody of a mandatory parolee released in
27 accordance with AS 33.16.100(c) and AS 33.20.040 until the expiration of
28 the maximum term or terms to which the prisoner was sentenced less 180
29 days.

1 (b) A disability imposed by AS 33.30.310 - 33.30.320 applies to a
2 parolee as long as the parolee is in the legal custody of the board but
3 the disability does not deny a parolee access to the courts to protect
4 rights the parolee may have.

5 (c) A parolee who has been on parole for six years shall be
6 discharged from parole and from the custody of the board unless the
7 board finds after a hearing that continued supervision is necessary for
8 the protection of society.

9 Sec. 33.16.260. DISCRETIONARY DISCHARGE OF PAROLEE. The board
10 may discharge a parolee from supervision and the custody of the board
11 and from further liability under his sentence after the parolee has
12 completed two years of parole. After a parolee has been under super-
13 vision for two years the board shall review his record biennially for
14 discharge.

15 Sec. 33.16.270. RELEASE OF PRISONER TO ANSWER PROCESS. If a
16 court of this state, another state, or the United States, or other
17 authority issues a warrant charging a prisoner with a crime, the board
18 may release the prisoner on parole to answer the warrant.

19 Sec. 33.16.280. REVOCATION OF PAROLE. (a) The board may revoke
20 the parole granted to a parolee for violation of a state or federal law
21 or a municipal ordinance or a condition imposed by the board under
22 AS 33.16.170(b).

23 (b) A parolee has the right to a preliminary hearing before a
24 single member of the board or a person authorized by the board to act
25 as a hearing officer to determine whether probable cause exists to
26 revoke parole. The preliminary hearing shall be held within 14 days of
27 the arrest of the parolee on the charge of violation of a state or
28 federal law or violation of a condition of parole. The single member
29 of the board or the hearing officer who holds the hearing may release

1 the parolee pending the hearing under (c) of this section.

2 (c) The parolee is entitled to a hearing before the board at the
3 first meeting of the board held after the preliminary hearing held
4 under (b) of this section. The parolee has the rights of a parolee
5 under AS 33.16.150 and 33.16.180 at the hearing. The board shall issue
6 its decision in writing and provide reasons for the decision. The
7 parolee is entitled to a copy of the decision on its issuance.

8 (d) At a hearing under this section, the commissioner has the
9 burden to show that parole should be revoked by clear and convincing
10 evidence.

11 (e) If after the hearing the board determines that a violation of
12 a condition of parole has occurred, it may revoke a portion of the
13 parole granted or change the conditions of parole. If the board does
14 not revoke a portion of the parole granted, the parolee shall be re-
15 leased from confinement and continued on parole under terms and condi-
16 tions established by the board.

17 (f) If after the hearing the board determines that a parolee has
18 violated a state or federal law or a municipal ordinance, the board may
19 require the parolee to serve all or a part of the remainder of the term
20 to which the parolee was sentenced.

21 (g) If the board revokes parole for a reason other than a viola-
22 tion of a state or federal law or a municipal ordinance, the board may
23 not return the parolee to confinement for a period in excess of six
24 months.

25 (h) A parolee may waive a hearing under (b) or (c) of this section
26 by submitting a written waiver to the board.

27 Sec. 33.16.290. ARREST OF PAROLE VIOLATOR. (a) A parolee charged
28 with violation of a condition of parole may be arrested only on a
29 warrant for arrest issued by the board or a member of the board based on

1 probable cause to believe that a violation of the condition of parole
2 has occurred.

3 (b) A parolee may be arrested without a warrant for a violation
4 of a condition of parole only under exigent conditions which require
5 immediate arrest.

6 Sec. 33.16.300. EXECUTION OF WARRANT FOR ARREST OF PAROLEE. (a)
7 A parole officer or a peace officer acting at the request of a parole
8 officer shall execute the warrant issued under AS 33.16.290 by arresting
9 the parolee and confining the parolee in a correctional facility desig-
10 nated by the commissioner.

11 (b) The parole officer shall immediately notify the board or a
12 member of the board of an arrest under (a) of this section. If the
13 arrest was without warrant, the parole officer shall immediately provide
14 the board or a member of the board with a report in writing indicating
15 in what manner the parolee violated a condition of his parole.

16 Sec. 33.16.310. APPLICABILITY TO PERSONS ON PAROLE OR INCARCERATED.

17 (a) This chapter applies to all persons convicted and sentenced in the
18 superior court and the district courts of the state.

19 (b) If the appropriate officers of the United States agree, the
20 legislature intends that this chapter also apply to persons convicted
21 before Alaska statehood of a crime punishable under the laws of a state
22 notwithstanding the fact that the prosecution may have been brought by
23 the United States and the prisoners were convicted and sentenced in
24 courts of the United States before Alaska became a state or before the
25 Alaska state court system was in operation.

26 Sec. 33.16.320. DEFINITIONS. In this chapter

- 27 (1) "board" means the Board of Parole;
28 (2) "commissioner" means the commissioner of health and
29 social services;

1 (3) "department" means the Department of Health and Social
2 Services;

3 (4) "discretionary parole" means the release of a prisoner
4 to the community by the board before the expiration of a term or terms,
5 subject to conditions imposed by the board and subject to its super-
6 vision;

7 (5) "mandatory parole" means the release of a prisoner to the
8 community by operation of law before the expiration of a term or terms,
9 subject to conditions imposed by the board and subject to its super-
10 vision;

11 (6) "parolee" means a prisoner released to the community by
12 the board or by operation of law.

13 * Sec. 2. AS 33.20.040(a) is amended to read:

14 (a) A prisoner serving the term or terms for which the prisoner
15 [HE] was sentenced less good time deductions shall be released uncondi-
16 tionally if there remains less than 180 days to serve under the [HIS]
17 sentence. If there remains more than 180 days to serve under the [HIS]
18 sentence a prisoner shall be released on parole under AS 33.16.100(c) [,
19 UPON RELEASE, SHALL BE CONSIDERED AS IF RELEASED ON PAROLE UNTIL THE
20 EXPIRATION OF THE MAXIMUM TERM OR TERMS FOR WHICH HE WAS SENTENCED LESS
21 180 DAYS].

22 * Sec. 3. AS 44.66.010(a)(3) is amended to read:

23 (3) [STATE] Board of Parole (AS 33.16.010) [(AS 33.15.010)] --
24 June 30, 1982;

25 * Sec. 4. AS 33.15 is repealed.

26 * Sec. 5. AS 33.16 enacted in sec. 1 of this Act applies to persons on
27 parole or being considered for parole on the effective date of this Act.

28 * Sec. 6. The terms of the members of the Board of Parole appointed
29 under AS 33.15.010 terminate on the effective date of this Act. The governor

1 shall appoint members to the Board of Parole established under AS 33.16.010
2 enacted in this Act for the following initial terms: one member for a five-
3 year term; one member for a four-year term; one member for a three-year
4 term; one member for a two-year term; and one member for a one-year term.

5 * Sec. 7. This Act takes effect January 1, 1983.
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